violation of the law. *Hart* v. *Bridgeport,* Fed. Cas., 6149. A person injured because of the negligent failure of the police to suppress a sham battle in the street has no right of action against the city. *Jolly's Adm'r* v. *Hawesville,* 89 Ky. 279, 12 S. W. 313.

By the better view, on the ground of governmental duty, it has been held that a city is not liable for the injuries received from the negligent discharge of fireworks displayed to amuse and entertain the public. *Tindley* v. *Salem,* 137 Mass. 171, 50 Am. Rep. 289; *Kerr* v. *Brookline,* 208 Mass. 190, 94 N. E. 257, 34 L. R. A. (N. S.) 464; *Bartlett* v. *Clarksburg,* 45 W. Va. 393, 72 Am. St. Rep. 817, 43 L. R. A. 295. But it has been held that a discharge of fireworks in a public street, authorized by the city, constitutes a public nuisance for which the city is liable. *Speir* v. *Brooklyn,* 139 N. Y. 6, 34 N. E. 727, 21 L. R. A. 641, 36 Am. St. Rep. 664. In a similar case a city was held not liable for the firing of a cannon in a public street. *Robinson* v. *Greenville,* 42 Ohio St. 625, 51 Am. Rep. 857; *O'Rourke* v. *Souix Falls,* 4 S. D. 47, 46 Am. St. Rep. 760. And a city is not liable for injuries resulting from the negligence of a city fireman; since it is the governmental duty of a city to protect its inhabitants from fire. *Jewett* v. *New Haven,* 38 Conn. 368, 9 Am. Rep. 332. Nor, for the same reason, is it liable for injuries to a pupil resulting from its failure to repair a staircase in a public school. *Hill* v. *Boston,* 122 Mass. 344, 23 Am. Rep. 381. But a distinction is made between a dangerous use of the streets and the unsafe physical condition of the streets themselves. In the latter case, because of the peculiar powers conferred upon a municipality in reference to its streets and because the interest of the whole public is involved, a municipality is held to be under a special duty to the public, and liable for injuries resulting from their unsafe condition. *Wilson* v. *Wheeling,* 19 W. Va. 323, 42 Am. Rep. 780.

A municipality is always liable for its quasi-private or ministerial duties just as a private corporation or an individual. Where a city owned a wharf from which it derived tolls, it was held liable for the loss of a vessel caused by its failure to keep the entrance thereto in a safe condition. *Petersburg* v. *Applegarth,* 28 Gratt. (Va.) 321, 26 Am. Rep. 357. And a city has also been held liable for improperly maintaining a market house. *Barron* v. *Detroit,* 94 Mich. 601, 54 N. W. 273, 34 Am. St. Rep. 366, 19 L. R. A. 452; *Suffolk* v. *Parker,* 79 Va. 660, 52 Am. Rep. 640.

NEGLIGENCE—IMPUTED NEGLIGENCE—INVITEES.—While plaintiff's daughter was riding in a vehicle in which she had been invited to ride, the defendant's train struck the vehicle, and she was killed. The accident was caused by the joint negligence of the defendant and the driver of the vehicle. The plaintiff brought an action to recover damages for the wrongful death. *Held,* the plaintiff can recover. *Martindale* v. *Oregon Short Line R. R. Co.* (Utah), 160 Pac. 275.

The decided weight of authority holds that the negligence of the driver of a vehicle is not imputed to an occupant who has no control over him. *Atwood* v. *Utah Light & Ry. Co.,* 44 Utah 366, 140 Pac. 137; *Knoxville Ry., etc., Co.* v. *Vangilder* (Tenn.), 178 S. W. 1117. *Contra, Lake*

v. *Springville Tp.* (Mich.), 153 N. W. 690. For discussion, see 1 VA. LAW REV. 252. But when the invitee is aware of the danger and remains in the conveyance, then he is himself guilty of contributory negligence. *Rebilliard* v. *Minneapolis, etc., R. Co.*, 216 Fed. 503. If, however, the guest does not realize the dangerous rate of speed at which he is being driven he is not negligent. *Beach* v. *City of Seattle* (Wash.), 148 Pac. 39. The degree of care and precaution which it is incumbent on the invitee to use depends on the circumstances of each particular case, and is for the jury to determine. See *Hermann* v. *Rhode Island Co.* (R. I.), 90 Atl. 813; *Carnegie* v. *Great Northern R. Co.*, 128 Minn. 14, 150 N. W. 164.

In cases where the relationship existing between the parties is such that it may be presumed that the occupant of the car exercised, or could exercise, control over the driver, the doctrine of imputed negligence applies. *Van Horn* v. *Simpson* (S. D.), 153 N. W. 883. See *Lawrence* v. *Sioux City* (Ia.), 154 N. W. 494. Thus, a policeman who negligently fails to prevent the driver, whose guest he is, from exceeding the speed limit cannot recover for injuries received in an accident caused by the car being driven at an excessive rate of speed. *Hubbard* v. *Bartholomew*, 163 Ia. 58, 144 N. W. 13. But the negligence of the husband is not imputed to the wife merely by virtue of the relationship existing between them. *Fisher* v. *Ellston* (Ia.), 156 N. W. 422. Yet some courts hold that where it can be shown that a wife specifically entrusted herself to her husband's care, his negligence is imputed to her. *Fogg* v. *New York, etc., Ry. Co.* (Mass.), 111 N. E. 960. Where two persons are engaged in a joint enterprise it may be presumed that they exercise control over each other. Thus, where two brothers hired a rig to drive to their father's home, the negligence of the driver was imputed to the other brother. *Christopherson* v. *Minneapolis, etc., Ry. Co.*, 28 N. D. 128, 147 N. W. 791. Merely because two people are on a pleasure trip together is not such a joint enterprise as is necessary to impute the negligence of the driver of the vehicle to his guest. *Withey* v. *Fowler*, 164 Ia. 377, 145, N. W. 923.

PARTNERSHIP — ABORTIVE CORPORATION — LIABILITY OF PROMOTERS TO THIRD PERSONS.—Defendants were associates in the promotion of a banking corporation. One of them, without authority from the others, incurred liabilities by purchasing stationary and supplies for the bank. The project was abandoned, and the associates were sued for the materials purchased. *Held*, all who participated in the project to found the corporation are liable as partners for the debts. *Hall Lithographing Co.* v. *Crist* (Kan.), 160 Pac. 198.

Persons who associate for the purpose of organizing a corporation and who form neither a *de jure* nor a *de facto* corporation are liable as partners for debts incurred in the abortive enterprise. *Harrill* v. *Davis*, 168 Fed. 187, 22 L. R. A. (N. S.), 1153; *Whipple* v. *Parker*, 29 Mich. 369. The reason for this rule seems to be that since all parties intended their contracts to be binding, in order to prevent injustice, the courts consider it necessary to hold that the persons acting as a corporation when none existed are bound in the only capacity in which they had power to transact business, that is, as partners. *Central Nat'l Bank* v. *Sheldon*, 86 Kan.